



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 1st day of April, 1998

Served: April 7, 1998

In the matter of

FOREIGN AIR CARRIERS OF MEXICO

requirement to obtain prior approval for certain
Third and Fourth Freedom charter operations

Docket OST 98-3702

ORDER GRANTING EXEMPTION

Summary

By this order we exempt all Mexican foreign air carriers currently holding Department authority to conduct Mexico-U.S. charter operations, and all Mexican carriers that obtain this authority in the future, from the requirement that they obtain prior Department approval, in the form of a statement of authorization under 14 CFR Part 212, before operating any *individual* Third or Fourth Freedom charter flights in the Mexico-U.S. market, if, at their option, they instead submit a notice of such operations, as described below. Mexican carriers must still obtain statements of authorization before operating all *series or programs* of charter flights. We are taking this action consistent with a December 4, 1997, Exchange of Notes between the United States and Mexico. This exemption will be effective May 1, 1998, and will remain in effect until further order of the Department.

Background

The operation of charter operations in the Mexico-U.S. market by U.S. and Mexican carriers is provided for in Annex II of the bilateral aviation agreement between the United States and Mexico.¹ The Annex, as amended in 1991, contained a prior approval mechanism under which authorized carriers of each Party “may present for approval to the aeronautical authorities of both

¹ Agreement between the Government of the United States of America and the Government of the United Mexican States Amending the Air Transport Agreement of August 15, 1960, as Amended and Extended. The revised Agreement, including the charter Annex, became effective November 21, 1991. The charter Annex replaced a Memorandum of Understanding between the United States and Mexico on charter operations, formalized September 23, 1988.

Parties their applications for charter flights and schedules in advance, on a minimum of five working days, or fifteen working days when they are requesting authorization for more than ten flights....” We implemented the provisions of Annex II to the Agreement by requiring Mexican carriers to obtain our prior approval under 14 CFR section 212.4 of our rules before conducting any Mexico-U.S. charters.²

We imposed this requirement on new Mexican carriers by explicit condition on their exemption or foreign air carrier permit authority.³ In addition, we advised Mexican carriers already holding economic authority from the Department at the time the Annex was made effective that, under the condition of their Department authority that requires them to conduct operations consistent with the terms of any relevant bilateral aviation arrangement, they must likewise obtain our prior approval for their Mexico-U.S. charters.⁴

Recent Bilateral Undertakings

On December 4, 1997, the United States and Mexico executed an Exchange of Notes implementing, on a provisional basis pending formal Mexican ratification, agreements reached during bilateral negotiations held September 12-13, 1996. Among the items encompassed by these agreements was the amendment of Annex II to the Agreement to replace, in the case of individual charter flights operated by authorized U.S. and Mexican carriers, the current prior approval requirements with a simplified notice procedure. The revised language for paragraph 1 of Annex II states, in pertinent part:

(f) In the case of individual charter flights, each Party’s airlines that are in possession of the appropriate permits issued by the Government of Mexico and the Government of the United States, that have all of their documents in order, and that have complied with all of the established requirements, may operate charter flights of passengers or cargo between both territories, submitting a Flight Notification Form at least 24 hours in advance of the flight, for which the approval of the Aeronautical Authorities of the other Party shall not be required (the notifications may be submitted after the deadline if good cause can be shown). The airline, the type of flight, the type of aircraft to be used and its registration, and the dates, schedules, and scheduled flight routes shall be indicated on the Flight Notification Form.

The revised language for paragraph 1 of Annex II further provides that:

(g) In the case of charter flight programs or series, the prior approval of both Parties shall be required and the application must be filed in accordance with the provisions of

² Because of the limited nature of their operations, we have not required authorized Mexican carriers conducting operations solely with small aircraft to comply with this prior approval requirement. Our action in this order does not affect the authority held by these carriers.

³ See, for example, Orders 89-12-26 and 91-5-25.

⁴ See, for example, Order 78-6-127.

paragraph 1(c) of this Annex. Each Party shall make its best efforts to facilitate the authorization of a series of flights for which approval has not been requested on time.

Decision

In order to implement the bilateral undertaking memorialized in the Exchange of Notes, we will exempt Mexican carriers currently holding Department authority to conduct Mexico-U.S. charter operations, and all Mexican carriers that obtain this authority in the future, from the requirement that they obtain a statement of authorization under 14 CFR Part 212 before operating any *individual* Third and Fourth Freedom charter flights, if, at their option, they instead provide notice to the Department of these flights, using the notice format attached to this order, and following the instructions on page 2 of that notice format.⁵ We will make this exemption authority effective May 1, 1998, and it will remain in effect until further order of the Department.

We find that our action is consistent with the public interest, in view of the commitments made by the United States and Mexico in the Exchange of Notes. Moreover, we have confirmed with the Mexican DGCA that it is prepared to apply the simplified notice procedure with respect to U.S. carriers on May 1, 1998.

As noted above, under this authority a Mexican carrier holding either a foreign air carrier permit or an exemption authorizing it to perform Mexico-U.S. charter operations may at its option use the simplified notice procedure when planning to operate an individual (*i.e.*, a one-way or round-trip) Third or Fourth Freedom charter flight. It should do so by completing the notice format attached to this order, and filing it with the Department's Foreign Air Carrier Licensing Division, Office of International Aviation. If the carrier submits the notice late (fewer than twenty-four hours before commencement of the charter) it must state the reason for being late. Carriers may assume that such late notices have been accepted unless notified to the contrary by the Department.

Finally, consistent with the provisions of Annex II paragraph 1(g), programs or series of Mexico-U.S. charters by Mexican carriers remain subject to prior approval, and those carriers will still be required to obtain a statement of authorization under 14 CFR section 212.4 before conducting such operations.

In view of the above, we find that our action is consistent with the public interest, and with our obligations under 49 U.S.C. 40105(b).⁶ Further, our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

⁵ Representatives of the Department and the Mexican DGCA have devised an agreed format for the individual flight notices to be used by U.S. carriers in Mexico and Mexican carriers in the United States. A copy of that agreed format is attached to this order.

⁶ Our action will not affect the rights of passengers purchasing charter air transportation from Mexican carriers, as our consumer protection requirements contained in 14 CFR Parts 212 and 380 will continue to apply to these operations.

1. We exempt all Mexican foreign air carriers currently holding Department authority to conduct Mexico-U.S. charter operations, and all Mexican foreign air carriers that obtain this authority in the future, from the terms and conditions of their foreign air carrier permits or exemption authorities, as applicable, to the extent that these authorities require them to obtain prior Department approval, in the form of a statement of authorization under 14 CFR Part 212, before operating any *individual* Third or Fourth Freedom combination or all-cargo charter flight in the Mexico-U.S. market when these carriers at their option instead submit a notice of such operations, using the notice format attached to this order, following the instructions on page 2 of that notice format;
2. All *series or programs* of Third and Fourth Freedom charter flights, all long-term wet lease operations, and all Fifth Freedom charters to be conducted by those carriers remain subject to our prior approval under the provisions of 14 CFR section 212.4(b);
3. This action is effective May 1, 1998, and will remain effective until further order of the Department;
4. We may amend, modify, or revoke this order at any time and without hearing; and
5. We will serve a copy of this order on all U.S. certificated air carriers, Mexican foreign air carriers, the Ambassador of Mexico in Washington, D.C., the Department of State, and the Federal Aviation Administration (AFS-50 and DFW-FSDO).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Attachment

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/general/orders/aviation.html>.*

**NOTIFICACION DE VUELOS DE
FLETAMENTO ENTRE MEXICO Y
ESTADOS UNIDOS**

**NOTICE OF CHARTER FLIGHTS
BETWEEN THE UNITED MEXICAN
STATES AND THE UNITED STATES OF
AMERICA**

Dirección General de Aeronautica Civil	U.S. Department of Transportation
<p>Nombre del transportista aereo:</p> <p>Direccion/No. Telefonico:</p> <p>Dia(s) de Vuelo:</p> <p>Plan de Vuelo:</p> <p>Equipo:</p> <p>Matricula:</p> <p>Tipo de Vuelo:</p> <p>Tipo de Carga:</p> <p>Empresa Contratante:</p> <p>Fecha y No. de Permisos DGAC/DOT:</p> <p>Anexar Copia del Contrato</p> <p>Motivo de aviso extemporaneo:</p>	<p>Name of Air Carrier:</p> <p>Address/Telephone Number:</p> <p>Date(s) of Flight(s):</p> <p>Routing of Flight:</p> <p>Type of Aircraft:</p> <p>Aircraft Registration Number:</p> <p>Type of Flight:</p> <p>Type of Cargo:</p> <p>Contracting Company:</p> <p>Date & Number of DGAC/DOT license(s):</p> <p>Attach Contract Copy</p> <p>If notice is filed late, state reason for lateness:</p>
<p>Certificacion: Yo certifico que el transportista aereo arriba citado esta autorizado por el Gobierno de los Estados Unidos de America y por el Gobierno de los Estados Unidos Mexicanos para operar el tipo de vuelos de fletamento propuestos en este aviso y los vuelos aqui propuestos seran operados en acuerdo a las disposiciones senaladas en el Canje de Notas celebrado por los Gobiernos de los Estados Unidos de America y de los Estados Unidos Mexicanos y que entro en vigor de manera provisional el 4 de diciembre de 1997.</p>	<p>Certification: I certify that the air carrier named above is authorized by both the Government of the United Mexican States and the Government of the United States of America to conduct the type of charter flights proposed in this Notice, and that the proposed flights will be conducted consistent with the provisions of the Exchange of Notes between the Governments of the United States of America and the United Mexican States, that entered into force provisionally on December 4, 1997.</p>
<p>Nombre, firma y cargo del representante legal autorizado por el transportista aereo:</p> <p>_____</p> <p>_____</p> <p>Fecha: _____</p>	<p>Name, signature, and title of authorized carrier official:</p> <p>_____</p> <p>_____</p> <p>Date: _____</p>

Instrucciones/Instructions

Transportistas aereos de los Estados Unidos inscritos a la Dirección General de Aeronautica Civil: *U.S. Carriers filing with the Dirección General de Aeronautica Civil :*

<p>Este aviso debera ser llenado solamente por transportistas aereos estadounidenses que esten operando con un permiso y registro vigentes expedidos por la Dirección General de Aeronautica Civil, para operar vuelos individuales de fletamento entre los Estados Unidos y Mexico. La notificacion debidamente requisitada debera ser dirigida: Dirección General de Aeronautica Civil, Direccion de Transporte y Control Aeronautico, Providencia 807, 1er Piso, Col. del Valle, C.P. 03100 Mexico D.F. (o enviarla via fax (525) 5 23 34 19). La notificacion debera ser recibida con un minimo de 24 horas antes de la operacion de un vuelo individual de fletamento (los avisos extemporaneos deberan ser acompanados de una nota en la que se senale una causa justificable). Las operaciones deben ir acorde con todos los terminos y excepciones estipulados en el permiso y con el Artículo II Fraccion III y Artículo 24 de la Ley de Aviacion Civil. La presente autorizacion causa derechos de acuerdo al Artículo 159 Fraccion III de la Ley Federal de Derechos. Este importe debera ser cubierto directamente en la comandancia del aeropuerto respectivo.</p>	<p>This Notice may be used only by U.S. carriers that hold current operating authority from the Dirección General de Aeronautica Civil to conduct individual charter flights between the United States and Mexico. The completed Notice should be sent to: Dirección General de Aeronautica Civil Direccion de Transporte y Control Aeronautico Providencia 807, 1er Piso Col. del Valle C.P. 03100 Mexico D.F. (or faxed to (525) 5 23 34 19). The notice must be received at least 24 hours before the operation of an individual charter flight (the notice may be filed late upon the showing of good cause). Operations must conform to all applicable terms and conditions of the license and Article 11 Paragraph III and Article 24 of the Civil Aviation Law. In accordance with Article 159, para. III of the Mexican Federal Fee Law, there shall be a fee for each authorization. This charge must be paid at the office of the commander of the respective airport.</p>
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Transportistas aereos Mexicanos inscritos al Departamento de Transporte de los Estados Unidos de America: *Mexican Carriers filing with the U.S. Department of Transportation:*

<p>Este aviso debera ser llenado solamente por transportistas aereos mexicanos, que esten operando con un permiso para extranjeros o licencia vigente, expedida por el Departamento de Transporte estadounidense con especificaciones de operacion de la FAA (Administracion Federal de Aviacion) para operar vuelos individuales de fletamento entre los Estados Unidos de America y los Estados Unidos Mexicanos. La notificacion debidamente requisitada debera ser dirigida a: Foreign Air Carrier Licensing Division, X-45, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 (o enviar via fax al (202) 366-3694) La notificacion debera ser recibida por el Departamento con un minimo de 24 horas antes de la operacion de un vuelo individual de fletamento (los avisos extemporaneos deberan ser acompanados de una nota en la que se senale una causa justificable). Las operaciones deben ir acorde con todos los terminos y excepciones estipulados en el permiso o licencia extranjera para transportistas mexicanos, incluyendo la 14 CFR Parte 212 del Departamento de Transporte y la reglamentacion de la Administracion Federal de Aviacion.</p>	<p>This Notice may be used only by Mexican carriers that hold a foreign air carrier permit or exemption from the Department of Transportation to conduct individual charter operations between the United States and Mexico, and which hold current operations specifications from the Federal Aviation Administration to conduct such operations. The completed Notice should be sent to: Foreign Air Carrier Licensing Division, X-45 U.S. Department of Transportation 400 7th Street, S.W. Washington, D.C. 20590 (or faxed to (202) 366-3694). The notice must be received at the Department at least 24 hours before the operation (the notice may be filed late upon the showing of good cause). Operations must conform to all applicable terms and conditions of the Mexican carrier's foreign air carrier permit or exemption, the Department's regulations, including 14 CFR Part 212, and the regulations of the Federal Aviation Administration.</p>
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